

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

**NOTICE OF MOTION TO APPROVE COMPROMISE OR SETTLEMENT
AND OPPORTUNITY FOR HEARING**

Movant has filed a Motion with this Court seeking approval of a settlement or compromise, copy attached hereto.

If you have legal grounds to oppose the motion, or if you wish the Court to consider your views on the motion, you must file a written request for a hearing with the Clerk of the Bankruptcy Court before the expiration of twenty-one (21) days from the date stated in the certificate of service.

If you mail your request for hearing to the Court, you must mail it early enough so that it will be received before the time referenced above.

Any request for a hearing must also be mailed to the moving party and all other persons indicated in the certificate of service attached to these pleadings.

If a timely request is filed, you will receive notice of the date, time, and place of the hearing.

If you or your attorney does not take these steps, the Court will decide that you do not oppose the motion and will enter an order granting it.

Date: 11/13/2017

/s/ Tiffany E. Caron
Attorney for Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

In re:

RONALD W. MCELHANEY,

Debtor.

Chapter 7

Case Number: 17-40839-EJC

**TIFFANY E. CARON,
Chapter 7 Trustee,**

Plaintiff,

vs.

PATRICIA H. EMRICH,

Defendant.

Adversary Number: 17-04041-EJC

**MOTION FOR AUTHORITY TO COMPROMISE CLAIM OF THE ESTATE
PURSUANT TO BANKRUPTCY RULE 9019**

COMES NOW, Chapter 7 Trustee, Tiffany E. Caron (“Trustee”), by and through counsel of record, Tiffany E. Caron, and hereby moves this Court, pursuant to Bankruptcy Rule 9019, to approve a compromise and settlement of the estate’s claim against Defendant, Patricia H. Emrich (“Defendant” or “Ms. Emrich”). In support of this Motion, movant respectfully states as follows:

1. Plaintiff, Tiffany E. Caron, is the duly appointed bankruptcy trustee in the above-captioned Chapter 7 case.
2. The Debtor filed this Chapter 7 case on June 6, 2017 in the Southern District of Georgia, Savannah Division (the “Bankruptcy Case”).
3. Debtor listed on Schedule A, real property he owned jointly with Patricia H.

Emrich as follows: 526 E. 46th Street, Savannah, Georgia 31405 (the “Property”).

4. On or around April 14, 2014, by Quit Claim Deed, Debtor transferred ninety-nine percent (99%) of his ownership interest in the Property for stated consideration of \$10.00 (the “Transfer”) to Defendant, and one percent (1%) to himself.
5. The Trustee alleges that the Debtor made the Transfer for no consideration.
6. Defendant, Patricia H. Emrich received the Transfer from the Debtor within four (4) years of the filing of this Bankruptcy Case.
7. The Trustee alleges the Debtor received less than reasonably equivalent value in exchange for the Transfer.
8. The Trustee alleges the Debtor was insolvent at the time of the Transfer.
9. The Trustee alleges, pursuant to 11 U.S.C. §544 and O.C.G.A. §18-2-70 to §18-2-80, the forgoing Transfer is avoidable by the Trustee as a fraudulent transfer.
10. Defendant has filed an Answer denying the Trustee’s allegations.

The Trustee and Defendant, Patricia H. Emrich (the “Parties”), through counsel, have come to an agreement to resolve this Adversary Proceeding. The Parties have agreed that the Trustee will market the Property for sale and that the Parties will split the Net Proceeds (Net Proceeds shall be defined as: the funds remaining after payment of real estate commission, pro-rated real property taxes, seller’s closing costs, secured debts and liens) as follows:

- A. Defendant, Patricia Emrich shall receive thirty percent (30%) of the Net Proceeds of the sale of the Property at closing.

- B. In consideration for the forgoing, Ms. Emrich shall cooperate in the listing, marketing, showing and sale of the Property.
- C. Ms. Emrich shall keep the Property in reasonably good, showable condition and shall allow reasonable access to the Property for potential buyers and their agents.
- D. Ms. Emrich may use the Property as her residence until closing.
- E. Ms. Emrich consents to the attached order, subject to the forgoing settlement terms.
- F. Ms. Emrich shall sign any documents necessary to facilitate the closing of any sale of the Property.
- G. By agreement of the Parties, the remaining seventy percent (70%) of the Net Proceeds of any sale of the Property shall be paid to the Trustee for the benefit of the bankruptcy estate.

Due to the costs of litigation, the Trustee believes it is in the best interest of the estate to settle with Defendant as set forth above in full satisfaction of the estate's claim against Defendant based on the Transfer. The Trustee is requesting approval to settle with Defendant as set forth above. The attached Consent Order shall resolve all of the issues raised in this Adversary Proceeding.

Authority

Settlements are generally favored in bankruptcy proceedings in that they provide for often needed and efficient resolution of bankruptcy cases. Under Bankruptcy Rule 9019(a), the bankruptcy court may approve a compromise or settlement "on motion by the trustee and after a hearing on notice to creditors, the debtor and indenture trustee . . ." In conducting a hearing under Rule 9019(a), the bankruptcy court must determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct.

1157, 1163, 20 L. Ed. 2d 1 (1968). “In determining whether to approve a settlement, a bankruptcy court must evaluate whether the proposed compromise falls below the ‘lowest point in the range of reasonableness.’ *Martin v. Pahiakos (In re Martin)*, 490 F.3d 1272, 1275-76 (11th Cir. 2007) (citing *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983)). If a settlement passes this low threshold, the court should approve the compromise. Specifically, a court in this District must consider the four factors set forth by the Eleventh Circuit in *Justice Oaks* (the “Justice Oaks Factors”).” In this context, it is appropriate for the bankruptcy estate to examine four factors in deciding whether to approve or disapprove a settlement. These factors are as follows: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable view in the premises. *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), *cert. denied*, 498 U.S. 959, 111 S. Ct. 387, 112 L. Ed. 2d 398 (1990); *In re RFE Industries, Inc.*, 283 F.3d 159, 165 (3rd Cir. 2002), *citing In re Martin*, 91 F.3d 389, 393 (3rd Cir. 1996); *In re Kay*, 223 B.R. 816 (Bankr. M.D. Fla. 1998).

WHEREFORE, Chapter 7 Trustee, Tiffany E. Caron, respectfully requests that the Court grant this Motion giving the Trustee authority to settle the estate’s claim as set forth herein, and for any other relief deemed just and proper under the circumstances.

This 13th day of November, 2017.

Respectfully submitted,

MCCALLAR LAW FIRM

By: /s/ Tiffany E. Caron
Tiffany E. Caron
Georgia Bar Number 745089
Attorney for Trustee

Post Office Box 9026
Savannah, GA 31412
Tel: (912) 234-1215
Fax: (912) 236-7549
Tiffany.caron@mccallarlawfirm.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

In re: § **Chapter 7**
RONALD W. MCELHANEY, § **Case Number: 17-40839-EJC**
Debtor. §

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served the persons named below by sending a copy of the foregoing Motion for Authority to Compromise Pursuant To Bankruptcy Rule 9019, Notice of Motion to Approve Compromise or Settlement and Opportunity for a Hearing by electronic service or by regular U.S. Mail to the address indicated, in envelopes bearing adequate postage:

Patricia H. Emrich
526 East 46th Street
Savannah, GA. 31405-2335

Keri Martin, Esq.
Weiner Shearouse
P.O. BOX 10105
Savannah, GA 31412-0305
Attorney for Patricia H. Emrich

Judson C. Hill
Gastin & Hill
P O Box 8012
Savannah, GA 31412

Office of the U. S. Trustee
Johnson Square Business Center
2 East Bryan Street, Ste. 725
Savannah, GA 31401

And

All Creditors and Parties in Interest on the attached Mailing Matrix.

This 13th day of November, 2017.

MCCALLAR LAW FIRM

By: /s/ Tiffany E. Caron
Tiffany E. Caron
Georgia Bar Number 745089
Attorney for Trustee

Post Office Box 9026
Savannah, GA 31412
Tel: (912) 234-1215
Fax: (912) 236-7549
Tiffany.caron@mccallarlawfirm.com

Case 17-40839-EJC

Southern District of Georgia

Savannah

Mon Nov 13 12:03:19 EST 2017

American Express Centurion Bank
c/o Becket and Lee LLP
PO Box 3001
Malvern PA 19355-0701

ADS Security
3001 Armory Drive, Suite 100
Nashville, TN 37204-3711

American Express
P.O. Box 981537
El Paso TX 79998-1537

Heather Booth
13 E York Street
Savannah, GA 31401-3716

Bank of America
P. O. Box 45144
Jacksonville FL 32232-5144

(p)BANK OF AMERICA
PO BOX 982238
EL PASO TX 79998-2238

Tiffany E. Caron, Trustee
P.O. Box 9056
Savannah, GA 31412-9056

Center for Digestive & Liver Health
P. O. Box 14287
Savannah, GA 31416-1287

Chase
Bankruptcy Unit
P.O. Box 15298
Wilmington DE 19850-5298

Chatham County Tax Commissioner
Attn: Theresa C. Harrelson
Post Office Box 8324
Savannah, GA 31412-8324

Coastal Empire Plastic Surgery
900 Mohawk Street
Suite A
Savannah GA 31419-1772

Patricia H Emrich
526 E. 46th St.
Savannah, GA 31405-2335

Jeremiah B Gastin
Gastin & Hill
P O Box 8012
Savannah, GA 31412-8012

(p)GEORGIA DEPARTMENT OF REVENUE
COMPLIANCE DIVISION
ARCS BANKRUPTCY
1800 CENTURY BLVD NE SUITE 9100
ATLANTA GA 30345-3202

Georgia Emergency Physician Specialists
P. O. Box 3291
Indianapolis IN 46206-3291

Judson C. Hill
Gastin & Hill
P O Box 8012
Savannah, GA 31412-8012

Home Depot
P.O. Box 6497
Sioux Falls SD 57117-6497

Internal Revenue Service
Centralized Insolvency Operations
P.O. Box 7346
Philadelphia PA 19101-7346

Internal Revenue Service
Insolvency STOP 334-D, Room 400
401 W. Peachtree Street, NW
Atlanta GA 30308

Lanier Collection Agency & Services
P.O. Box 15519
Savannah GA 31416-2219

Keri McCrary Martin
WeinerShearouseWeitzGreenbergShaw, LLP
14 E State Street
Savannah, GA 31401-3713

Ronald W McElhaney
526 E. 46th Street
Savannah, GA 31405-2335

Memorial Health University Med Ctr
Box 830913
Birmingham AL 35283-0913

Memorial Health University Med Ctr
P. O. Box 23089
Savannah GA 31403-3089

Memorial Physician Prac Group
P.O. Box 102763
Atlanta GA 30368-2763

Minuteclinic of Virginia
P. O. Box 8444
Belfast ME 04915-8444

Office of the U. S. Trustee
Johnson Square Business Center
2 East Bryan Street, Ste 725
Savannah, GA 31401-2638

Small Business Administration
1720 Peachtree Road, NW
6th Floor, Peachtree 25th Complex
Atlanta GA 30309-2449

Small Business Assistance Corp.
P. O. Box 10750
Savannah GA 31412-0950

Southside Fire/EMS
Mercy Ambulance Service
1399 Dean Forest Road
Savannah GA 31405-9307

St. Joseph's/Candler
Dept 2439
P.O. Box 2252
Birmingham AL 35246-2439

St.JosephsCandler
5353 Reynolds St
Savannah, GA 31405-6015

Transworld Systems Inc
507 Prudential Road
Horsham PA 19044-2308

U.S. Small Business Administration
233 Peachtree Street NE
Suite 300
Atlanta, GA 30303-1553

US Attorney
P. O. Box 8970
Savannah GA 31412-8970

United States Attorney
P.O. Box 8970
Savannah GA 31412-8970

Wells Fargo
P. O. Box 94435
Albuquerque NM 87199-4435

Wells Fargo
P.O. Box 14517
Des Moines IA 50306-3517

Wells Fargo Bank, N.A.
435 Ford Road, Suite 300
St. Louis Park, MN 55426-4938

Wells Fargo Bank, N.A.
Wells Fargo Card Services
PO Box 10438, MAC F8235-02F
Des Moines, IA 50306-0438

Wells Fargo Home Mortgage
MAC X7801-03K
3476 Stateview Blvd.
Fort Mill SC 29715-7203

Wells Fargo Home Mortgage
P.O. Box 10335
Des Moines IA 50306-0335

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Bank of America
P.O. Box 982238
El Paso TX 79998-2238

Georgia Department of Revenue
Bankruptcy Section
1800 Century Blvd, NE, Suite 9100
Atlanta GA 30345

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Tiffany E. Caron, Trustee
P.O. Box 9056
Savannah, GA 31412-9056

(d)Chatham County Tax Commissioner
Attn: Theresa C. Harrelson
Post Office Box 8324
Savannah, GA 31412-8324

End of Label Matrix	
Mailable recipients	47
Bypassed recipients	2
Total	49